

**REMARKS / ARGUMENTS**

Claims 1, 10, 19 and 29-53 are pending in the instant application. Claims 1, 10, 19, 29, 37, and 45 have been amended. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1, 10, 19, and 29-53 are rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. Claims 1, 10, 19, 29, 37, and 45 are rejected under 35 U.S.C. § 102(e) as being anticipated by Newberg, et al., US Patent Publication № 2002/0093983 ("Newberg"). Claims 30-36, 38-44, and 46-53 would be allowable if rewritten to overcome the 112 rejections and to include all of the limitations of the base claim and any intervening claims.

The Applicant respectfully traverses these rejections at least based on the following remarks.

**I. Rejections under 35 U.S.C. § 112, 2<sup>nd</sup> Paragraph**

Claims 1, 10, 19, and 29-53 are rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. The Office Action states the following:

Regarding to claims 1, 10, and .19, the term "a device hierarchy" fails to particularly point out which device hierarchy between first access device and first access point uses to reserving ofthe bandwidth.

Regarding to claims 29,37,45, the term "utilizing at least an unused remaining portion ofthe reserved bandwidth" fails to particularly point out what the utilizing the remaining portion of reserved

bandwidth for.

See the Office Action at page 2. The Applicant has amended claims 1, 10, and 19, as set forth above, to clarify the use of the term “device hierarch.” The Examiner is further referred to FIG. 4 and ¶¶ 53-57 of the present application for additional information regarding the use of the term “device hierarchy.” The Applicant also points out that claims 1, 10, and 19 explicitly state “device hierarchy established within the hybrid wired/wireless local area network”, i.e., the device hierarchy is used within the hybrid LAN, with regard to the “one or more of a first access device, a first access point and/or a first switch.” The Applicant submits that claims 1, 10, and 19 are now allowable and the rejection under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph should be withdrawn.

The Applicant has amended claims 29, 37, and 45, as set forth above, to clarify the use of the term “utilizing at least an unused remaining portion of the reserved bandwidth.” The Applicant submits that claims 29, 37, and 45 are now allowable and the rejection under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph should be withdrawn.

## **REJECTION UNDER 35 U.S.C. § 102**

### **II. Newberg Does Not Anticipate Claims 1, 10, and 19**

The Applicant first turns to the rejection of claims 1, 10, and 19 under 35

U.S.C. 102(e) as being anticipated by Newberg. With regard to the anticipation rejections under 102(b), MPEP 2131 states that “[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See *id.* (internal citation omitted). Without conceding that Newberg is prior art under 35 U.S.C. § 102(e), the Applicant traverses the rejection as follows.

With regard to the rejection of independent claims 1, 10, and 19 under 35 U.S.C. § 102(e), the Applicant submits that Newberg does not disclose or suggest at least the limitation of “reserving bandwidth for one or more of a first access device, a first access point and/or a first switch, wherein said reserving of said bandwidth is based on a device hierarchy established within the hybrid wired/wireless local area network,” as recited by the Applicant in independent claim 1.

Newberg discloses the following:

The management device converts the received application requirements into channel requirements. That is, the management device converts the application requirements to the availability and data rate for the channel, for example, a number of slots for transmission of this data per second available on a wireless channel. After the channel requirements are determined, the management device determines whether the existing channel,

including existing loading, can accommodate the requested channel requirements. If the requested bandwidth is available, the bandwidth is allocated to the requesting device and the device is notified that communications may proceed.

See Newberg at ¶ 0013. In this regard, the management device of Newberg converts any application requirements into channel requirements, and determines whether the existing channel can accommodate these channel requirements, including the necessary bandwidth. **If the bandwidth can be accommodated, then the bandwidth is allocated to the requesting device, regardless of the type of device and regardless of any device hierarchy within Newberg's communication network.** In this regard, Newberg does not disclose or suggest "said reserving of said bandwidth is based on a device hierarchy established within the hybrid wired/wireless local area network," as recited in Applicant's claim 1.

Accordingly, independent claim 1 is not anticipated by Newberg and is allowable. Independent claims 10 and 19 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 10 and 19 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

### **III. Claims 29, 37, and 45**

In page 3 of the Office Action, the Examiner has rejected claims 29, 37, and 45 under 35 U.S.C. § 102(e). Since claims 29, 37, and 45 were indicated as

allowable in the previous (October 5, 2007) Office Action, the Applicant is of the opinion that claims 29, 37, and 45 are being rejected in error. If the Examiner indeed intended to reject claims 29, 37, and 45 under 35 U.S.C. § 102(e), then the Examiner's argument stated in page 3 of the current Office Action is deficient. For example, the Examiner's argument stated in page 3 of the current Office Action does not address the "utilizing at least an unused remaining portion of said reserved bandwidth during at least a second communication session" claim limitation appearing in claims 29, 37, and 45. The Applicant submits that Newberg does not disclose this claim limitation and, therefore, claims 29, 37, and 45 are allowable at least for this reason.

#### **IV. Claims 30-36, 38-44, and 46-53**

The Examiner has amended claims 29, 37, and 45, as set forth above, to overcome the rejection under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. Therefore, the Applicant submits that independent claims 29, 37, and 45 are now allowable. Claims 30-36, 38-44, and 46-53 depend from claims 29, 37, and 45, and are consequently, also submitted to be allowable at least based on the above reasons.

The Applicant reserves the right to argue any additional reasons for the allowability of claims 1, 10, 19, and 29-53.

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**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1, 10, 19, and 29-53 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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